

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal')
)
 of)
)
 MARY ANN LYDON AND MARY ANN LYDON)
 ON BEHALF OF WILLIAM H. LYDON, DECEASED)

Appearances: `

For Appellant: Mary Ann Lydon, in Propria Persona

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Mary Ann Lydon in her own behalf and in behalf of William H. Lydon, deceased, for refund of personal income tax in the amounts of \$11.70 and \$5.06 for the years 1949 and 1952, respectively.

Appellant is the widow of William H. Lydon, Prior to his death in 1953 Mr. Lydon was employed by Associated Telephone Company, Ltd., of Santa Monica, California. Mr. and Mrs. Lydon filed joint returns for the years 1949 and 1952. Included in the amounts reported as wages were the sums of \$955.20 for 1949 and \$506.58 for 1952 which had been paid to Mr. Lydon by his employer for periods during which he was absent from work due to sickness. These amounts represented three-fourths of his regular rate of pay, and were paid to him under a disability plan provided and financed by his employer.

Former Section 17127 of the Revenue and Taxation Code, applicable to the years involved, provided so far as here material that "... gross income also does not include amounts received, through accident or health insurance . . . as compensation for personal injuries or sickness . . ." This section was substantially the same as Section 22(b)(5) of the United States Internal Revenue Code of 1939.

The Appellant contends that the payments received during Mr. Lydon's sickness were **excludible** from income under the section quoted above, The precise question is whether the plan for payment constituted "**health insurance.**"

Appeal of Mary Ann Lydon

After this matter was submitted, all uncertainties as respects the status of employer furnished disability plans as "health insurance" were eliminated by the United States Supreme Court in Haynes v. U. S., 353 U.S. _____, 1 L. Ed. 2d 671, decided April 1, 1957. This case involved a plan of the Southern Bell Telephone and Telegraph Company under which payments varying in duration and amount, depending upon length of service, were made by the company to its employees during periods of absence from work due to sickness. The Government argued that this plan differed from the normal commercial insurance contract. The court, however, upheld the position of the taxpayer, stating in part:

"... Broadly speaking, 'health insurance is an undertaking by one person for reasons satisfactory to him to indemnify another for losses caused by illness. We believe that the Southern Bell Disability Plan comes within this meaning of health insurance ... [W]e see no reason why the term 'health insurance' in §22(b)(5) should not be given its broad general meaning,?"

We conclude, accordingly, that under former Section 17127 the payments in question were specifically excluded from Appellant's gross income.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Mary Ann Lydon in her own behalf and in behalf of William H. Lydon, deceased, for refund of personal income tax in the amounts of \$11.70 and \$5.06 for the years 1949 and 1952, respectively, be and the same is hereby reversed,

Done at Sacramento, California, this 12th day of June, 1957, by the State Board of Equalization,

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: R. G. Hamlin
Acting
Secretary